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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-098]

Polyester Textured Yarn from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of polyester textured yarn (yarn) from the People's Republic of China (China).

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Joseph Dowling or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1646 or (202) 482-9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2019, Commerce published in the *Federal Register* the *Preliminary Determination*.¹ The selected mandatory respondents in this investigation are Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. (Fujian Billion), Suzhou Shenghong Fiber Co., Ltd. (Shenghong Fiber), and Suzhou Shenghong Garmant Development Co. (Garmant). In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Tariff Act of 1930,

¹ See *Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 19040 (May 3, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

as amended (the Act), and 19 CFR 351.210(b)(4), Commerce aligned the final countervailing duty (CVD) determination with the final antidumping duty (AD) determination. The revised deadline for the final determination of this investigation is now November 13, 2019. On August 22, 2019, Commerce issued its Post-Preliminary Analysis.²

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.³ The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation (POI) is January 1, 2017 through December 31, 2017.

Scope of the Investigation

The products covered by this investigation are yarn from China. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation" in Appendix I.

² See Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation of Polyester Textured Yarn from India," dated August 22, 2019 (Post-Preliminary Analysis).

³ See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China," dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

Scope Comments

During the course of this investigation and the concurrent AD investigation of yarn from China, and concurrent AD and CVD investigations of yarn from India, certain interested parties commented on the scope of the investigations as it appeared in the *Initiation Notice*.⁴ Commerce addressed these comments in the *Preliminary Determination*, wherein Commerce preliminarily modified the scope language as it appeared in the *Initiation Notice* to exclude bulk continuous filament yarn.⁵ No interested parties commented on the preliminary exclusion of bulk continuous filament yarn. Thus, we have made no changes to the scope language from the *Preliminary Determination* with regard to bulk continuous filament yarn.

On May 2, 2019, the petitioners⁶ requested that Commerce include an additional Harmonized Tariff Schedule of the United States (HTSUS) subheading in the scope language.⁷ Specifically, the petitioners requested that Commerce add HTSUS 5402.52.00 covering twisted yarn to the scope of the investigations.⁸ As no interested parties rebutted the petitioners' request to add this HTSUS subheading, and Commerce finds the petitioners' request is reasonable, we have revised the scope of the investigations to include HTSUS 5402.52.00. *See* Appendix I for the final scope of the investigation.

Final Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1)(B) of the Act, Commerce preliminarily determined that critical circumstances existed for all imports of yarn from China.⁹ Based our examination

⁴ *See Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 58223, 58233 (November 19, 2018) (*Initiation Notice*).

⁵ *See Preliminary Determination*, 84 FR at 19041.

⁶ Unifi Manufacturing, Inc., and Nan Ya Plastics Corporation, America, collectively, the petitioners.

⁷ *See* Petitioners' Comments, "Request to Include HTSUS Subheading 5402.52 in the Scope of These Investigations," dated May 2, 2019 (Petitioners' Comments).

⁸ *See* Petitioners' Comments.

⁹ *See Preliminary Determination* PDM at 6.

of the data on the record, we continue to determine that critical circumstances exist for all producers/exporters of yarn from China in the final determination. For comments regarding critical circumstances, *see* Issues and Decisions Memorandum.

Verification

As provided in section 782(i) of the Act, in July 2019, we conducted verification of the questionnaire responses submitted by Fujian Billion and the Government of China (GOC).¹⁰ We used standard verification procedures, including an examination of relevant accounting and financial records, and original source documents.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.¹¹ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

¹⁰ *See* Commerce Memoranda, “Verification of the Questionnaire Responses of Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd and Billion Development (Hong Kong) Limited,” dated August 5, 2019; and “Verification of the Questionnaire Responses of the Government of the People’s Republic of China,” dated August 5, 2019.

¹¹ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

In making this final determination, Commerce relied, in part, on facts available pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because one or more respondents did not act to the best of their ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. For further information, *see* the section “Use of Facts Otherwise Available and Adverse Inferences” in the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, minor corrections presented at verification, and our verification findings, we made certain changes to Fujian Billion’s subsidy rate calculations. Commerce has also revised the adverse facts available (AFA) rate and the all-others rate. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Fujian Billion, a producer/exporter of subject merchandise selected for individual examination in this investigation. Commerce assigned rates based entirely on facts otherwise available with adverse inferences pursuant to section 776 of the Act to Shenghong Fiber and Garmant.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned rates based entirely on facts available for Shenghong Fiber and its cross-owned affiliates, and Garmant. Therefore, the only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Fujian Billion. Consequently, the rate calculated for Fujian Billion is also assigned as the rate for all other producers and exporters.

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy Rate
Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. ¹²	32.18 percent
Suzhou Shenghong Fiber Co., Ltd. ¹³	473.09 percent
Suzhou Shenghong Garmant Development Co	472.51 percent
All Others	32.18 percent

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the “Scope of the Investigation”

¹² As discussed in the PDM, Commerce has found the following companies to be cross-owned with Fujian Billion: (1) Billion Development (Hong Kong) Limited and (2) Billion Industrial Investment Limited.

¹³ As discussed in the PDM, Commerce has found the following companies to be cross-owned with Suzhou Shenghong Fiber Co., Ltd.: (1) Jiangsu Zhonglu Technology Development Co., Ltd., (2) Jiangsu Guowang High-Technique Fiber Co., Ltd., (3) Jiangsu Shenghong Science and Technology Co., Ltd., (4) Jiangsu Honggang Petrochemical Co., Ltd., (5) Shenghong Group Co., Ltd., (6) Shenghong Holding Group, Co., Ltd., (7) Shenghong (Suzhou) Group Co., Ltd., (8) Jiangsu Shenghong Investment Development Co., Ltd., (9) Jiangsu Shenghong New Material Co., Ltd., and (10) Jiangsu Shenghong Textile Imp & Exp Co. and its successor Jiangsu Huahui Import and Export Co., Ltd.

section entered, or withdrawn from warehouse, for consumption on February 2, 2019, which is 90 days before the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after August 31, 2019, but to continue the suspension of liquidation of all entries from February 2, 2019 through August 30, 2019.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: November 13, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams).

Excluded from the scope of this investigation is bulk continuous filament yarn that: (a) is polyester synthetic multifilament yarn; (b) has denier size ranges of 900 and above; (c) has turns per meter of 40 and above; and (d) has a maximum shrinkage of 2.5 percent.

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Merchandise subject to this investigation may also enter under HTSUS subheading 5402.52.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Use of Facts Otherwise Available and Adverse Inferences
- IV. Subsidies Valuation
- V. Analysis of Programs
- VI. Analysis of Comments

General Issues

- Comment 1: Whether it is Unlawful to Investigate Uninitiated Programs
- Comment 2: Whether it is Appropriate to Collect Cash Deposits on Entries Subject to Preliminary Affirmative Critical Circumstances
- Comment 3: Whether Commerce Must Consider 301 Duties in a Critical Circumstances Determination

Program-Specific Issues

- Comment 4: Export Buyer's Credit (EBC) Program
 - 4a. Whether to Continue to Apply AFA to EBC Program
 - 4b. The Appropriate AFA Rate for the EBC Program
- Comment 5: Provision of Monoethylene Glycol (MEG) and Purified Terephthalic Acid (PTA) for Less Than Adequate Remuneration (LTAR)
 - 5a. Whether MEG and PTA Producers are Authorities
 - 5b. Whether MEG and PTA are Specific to the Polyester Textured Yarn Industry
 - 5c. Whether Commerce used the Correct Benchmark to Determine Remuneration for MEG and PTA
- Comment 6: Provision of Electricity for LTAR
 - 6a. Whether the Provision of Electricity is Countervailable
 - 6b. Whether the Record Supports Applying AFA to Find Electricity for LTAR
- Comment 7: Whether the GOC Provided Countervailable Policy Loans During the POI

Company-Specific Issues

- Comment 8: Whether Application of AFA for Shenghong Fiber is Warranted
- Comment 9: Whether Commerce's Calculation of the AFA Rate is Unreasonable
- Comment 10: Calculation of Fujian Billion's Benefit of Electricity for LTAR
- Comment 11: Calculation of Fujian Billion's Benefit for Tax Deduction for Research and Development (R&D) Expenses
- Comment 12: Calculation of the Benefit for Fujian Billion's Import Tariff and Value Added Tax (VAT) Exemptions on Imported Equipment

- VII. Recommendation

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